

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24**

KING'S ALLEY MANAGEMENT, INC.

Employer¹

and

OUR VIRGIN ISLANDS LABOR UNION
(OVILU)

Petitioner

Case 24-RC-8602

DECISION AND ORDER

Upon a Petition duly filed under Section 9 (c) of the National Labor Relations Act, as amended, herein the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein the Board, to determine whether a question concerning representation exists, and if so, to determine an appropriate unit for collective bargaining. Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its authority to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The name of the Employer appears as amended at the hearing.

² A brief filed by the Employer was considered. The Petitioner did not file a brief.

2. The Employer is not engaged in commerce within the meaning of the Act and it will not effectuate the purposes of the Act to assert jurisdiction herein as discussed below.
3. The parties stipulated and I find that Petitioner is a labor organization within the meaning of Section 2 (5) of the Act.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c) (1) and Sections 2 (6) and (7) of the Act.

I. Issue

King's Alley Management, Inc. (herein the Employer)³, contrary to the Petitioner, claims that the Board does not have jurisdiction over it because it is owned and operated by the Virgin Islands Public Finance Administration (herein VIPFA)⁴, a political subdivision of the United States Virgin Islands Government.

For the reasons set forth below, I find that the Employer is an exempt political subdivision of the United States Virgin Islands because, under the second prong of Hawkins Country, 402 U.S. 600 (1971), it is administered by public officials and/or individuals responsible to public officials, and as such, is exempt from the Board's jurisdiction under Section 2(2) of the Act.

³ The parties stipulated that the Employer is a United States Virgin Islands (hereinafter USVI) corporation that operates a hotel in St. Croix. During a projected 12 month period, representative of its operations, the Employer is expected to receive gross volume from the operation of the hotel in excess of \$500,000 and to purchase and receive goods and materials valued in excess of \$50,000 from places located in the USVI but who, in turn, received such goods and materials from outside the USVI.

⁴ The VIPFA is a public corporation and a government instrumentality of the Virgin Islands Government. It was created by the Virgin Islands Legislature to encourage economic development through the issuance of bonds and notes for the purpose of raising capital for essential public projects and creating programs to serve the financing needs of the US Virgin Islands. 29 V.I.C. Chapter 15, Section 916. The VIPFA has the power to acquire property in the settlement or reduction of debts previously contracted or in exchange for investments previously made in the course of business.

II. The Employer's Operations

The record reflects that before February 25, 2003 the King's Alley Hotel was operated by a company known as Development Consultants, Inc. Apparently, Development Consultant, Inc. defaulted on a loan issued by the VIPFA which was secured by the hotel property. Litigation of the debt resulted in the transfer of the property to VIPFA pursuant to a marshal's deed of sale on February 25, 2003.

The record reflects that prior to acquiring the property VIPFA organized a private for-profit corporation under the laws of the United States Virgin Islands which was intended to operate and manage the hotel until VIPFA found a buyer for the property. It appears that after officially acquiring the property VIPFA began a remodeling and restoration process which has continued to date. The record reflects that as of the day of the hearing the hotel's restaurant is still under renovation.⁵

More particularly, Julito A. Francis, Director of Finance and Administration of VIPFA, testified without contradiction that from 2003 until early 2008, the hotel property was renovated using funds provided by the VIPFA which has expended more than \$6.0 million dollars for this purpose. In addition, VIPFA provides the Employer with a line of credit which it uses when revenues from its hotel operations are insufficient. According to Mr. Francis, from September, 2002 to about March, 2008, the Employer has used about \$335,000 from this line of credit to help it with operational expenses unrelated to the ongoing remodeling of the property.

The Employer's by-laws state that the total number of shares of stock which the corporation is authorized to issue is 1,000 shares with no par value. The record reflects

⁵ A January 31, 2008 newspaper account about the hotel states that the USVI government had expended about 11.4 million in government funds to acquire, renovate and litigate the default on the secured loan.

that VIPFA is the owner of all of the Employer's shares. The by-laws also state, *inter alia*, that the corporation shall be managed by a five member Board of Directors. Any or all of the Directors can be removed for cause by a vote of the stockholders or by the action of the Board, and without cause only by the vote of its stockholders. In January of 2003, the Virgin Islands Bureau of Internal Revenue Service issued a private ruling recognizing the Employer as a wholly owned subsidiary of VIPFA.

Mr. Francis testified that he is responsible for the oversight of all Employer operations. Currently, the Employer's Board of Directors is composed of the Governor of the Virgin Islands⁶, ex-officio; the Director of Finance and Administration of the VIPFA; the Commissioner of Finance of the USVI; the Director of the Office of Management and Budget of the USVI and two private sector Directors.

The 21 room hotel also has a restaurant which, as noted, is still going through renovations. The Employer employs four front desk clerks and two housekeepers⁷ and a general manager, Tony Jeffers, who is responsible for the day-to-day management of the hotel. Mr. Jeffers is under the general supervision and direction of Monique Simmons who occupies the position of "Property Manager" with VIPFA. In addition to the hotel Ms. Simmons also oversees the operations of the Kings Alley Mall, where her office is located.

Ms. Simmons stated that the money generated from the hotel is used to cover its operational expenses, and if its revenues are not sufficient, the money is transferred from a VIPFA account to the Employer's operations account. Ms. Simmons further stated that all issues related to employee relations, benefits, promotions, or complaints,

⁶ The Governor of the USVI is also the Chairman of the Board of the VIPFA.

⁷ The parties stipulated that the petitioned unit was appropriate.

are handled by VIPFA and referred to the Employer's Board of Directors for final approval. Jeffers is involved in approving annual leave requests, overtime as needed and prepares the employees' work schedules. Simmons testified without contradiction that the Director of VIPFA has sole authority to hire, fire, and discipline employees.

The Union presented Debra Mondesir, who testified that she has worked as a desk clerk at the Employer's facility for 11 years. She is not a government employee, and does not receive the employee benefits the government offers. She receives pay for all federal holidays and a yearly paid vacation. Mondesir further testified that her pay check comes from the Employer, but admitted that she is unaware of the source of the funds for her payroll check. She also testified that there is no employee policy handbook, and that Hotel Manager Jeffers is her immediate supervisor, therefore she has no daily contact with Property Manager Simmons.

III. Discussion

A. Political Subdivision

Section 2(2) of the Act excludes from the definition of employer under the Act "the United States or any wholly owned Government corporation of any Federal Reserve Bank, or any state or political subdivision thereof." In order to determine whether entities are political subdivisions exempt from the Act, the Board uses a two-prong test established in NLRB v. Natural Gas Utility District of Hawkins County, 402 U.S. 600 (1971). Under that test political subdivisions are entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public

officials or to the general electorate. The Court stressed that the Board should examine an entity's actual operations and characteristics when assessing its Section 2 (2) status.

At the outset, I note that the Employer was not created directly by the state so as to constitute an administrative arm of the government, therefore the Employer is not exempt from the Board's jurisdiction under the first prong of Hawkins County, supra.

B. Responsible to Public Officials

Under the second prong of Hawkins, an employer will be exempt from the Board's jurisdiction if it is administered by individuals who are responsible to public officials or to the general electorate. The Board considers whether the individuals who administer the entity in question are appointed or subject to removal by public officials; whether the employer is publicly or privately funded; whether its budget is subject to any financial reporting or auditing strictures; whether it carries out day to day management responsibilities free from or subject to oversight. See Oklahoma Zoological Trust, 325 NLRB 171 (1971).

First, the Board has continued to find an employer exempt from the Act's jurisdiction if a majority of an employer's board of directors is composed of individuals responsible to public officials or to the general electorate. In University of Vermont, 297 NLRB 291 (1989), 12 out of 21 members of the Board of Trustees were selected by the State either by legislation or by gubernatorial appointment. The Board of Trustees operated in an autonomous manner, with independent authority to establish personnel policies, wages and benefits and to enter into collective bargaining agreements and to ratify such agreements without the approval of the legislature. Applying the test in Hawkins, the Board held that if a mere majority of a board is elected or appointed by the

state, the state exercises control over the organization, and thus the organization is a political subdivision.

The record shows that the Employer's Board of Directors is composed of five directors, three of which are USVI public officials, specifically, the Director of Finance and Administration of the VIPFA, the Commissioner of Finance, and the director of the Office of Management and Budget. In addition, the Governor of the USVI serves as a Director ex-officio. Thus, three out of five Directors of the Employer are public officials of the Government of the USVI. Therefore, the evidence shows that a majority of the members of the Board of Directors are responsible to the USVI and are in fact public officials.

Second, the record shows that the Employer's operations and substantial renovations are and have been funded by the proceeds of the bonds issued by the VIPFA, and as such its budget is subject to approval of the VIPFA. In addition, the Board of Directors is responsible for the Employer's overall management and the daily management and the supervision of the hotel is the responsibility of Property Manager Simmons, who is a VIPFA employee. Therefore, the record supports the conclusion that the Employer is an exempt political subdivision under the second prong of Hawkins.

IV. Order

It is HEREBY ORDERED that the Petition filed herein be, and it hereby is dismissed.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. The Board in Washington must receive this request by **July 9, 2008**. The request may not be filed by facsimile.

NOTICE OF ELECTRONIC FILING

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the enclosed Attachment supplied with this Decision and Order for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web center: www.nlrb.gov.

Dated at San Juan, Puerto Rico this 25th day of June 2008.



/s/

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